

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KENNETH D. MORRISON,

Plaintiff,

-against-

FEDERAL EXPRESS CORPORATION,

Defendant.
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MEMORANDUM AND ORDER

CV 09-4915 (LDW) (ARL)

WEXLER, District Judge

Plaintiff Kenneth D. Morrison brings this action against defendant Federal Express Corporation (“FedEx”) claiming that he was terminated from his employment at FedEx because of his age in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (“ADEA claim”), and the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.* (“NYSHRL claim”). FedEx moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure dismissing plaintiff’s claims and, in any event, striking plaintiff’s request for punitive damages. Plaintiff opposes FedEx’s motion to the extent FedEx seeks dismissal of the ADEA and NYSHRL claims, but does not defend his request for punitive damages.

Upon consideration, the request for punitive damages is stricken, as punitive damages are not recoverable under the ADEA and NYSHRL. *See Johnson v. Al Tech Specialties Steel Corp.*, 731 F.2d 143, 146-48 (2d Cir. 1984); *Thoreson v. Penthouse Int’l, Ltd.*, 80 N.Y.2d 490, 496, 591 N.Y.S.2d 978, 979 (1992). Otherwise, the motion is

denied, as genuine issues of material fact exist, precluding the entry of summary judgment. See Fed. R. Civ. P. 56(a) (party seeking summary judgment must demonstrate that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Gallo v. Prudential Residential Servs. Ltd. P’ship*, 22 F.3d 1219, 1223-24 (2d Cir. 1994).

Accordingly, FedEx’s motion for summary judgment is granted in part and denied in part.

SO ORDERED.

/s/
LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
February 3, 2012